

No. 83-672

IN THE

Supreme Court of the United States

October Term, 1983

U.S. Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

FREDERICK E. ALTHISER, *et al.*,

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONSE OF McCLAY *et al.*, RESPONDENTS,
IN SUPPORT OF CERTIORARI

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NEW YORK STATE DEPARTMENT OF
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Respondents.

Response of McClay et al., Respondents,
in support of Certiorari

A petition for a writ of
certiorari in the above-entitled and
numbered case was docketed in the
Supreme Court of the United States on
the 24th day of October, 1983, by

Frederick E. Altheiser, et al., as Petitioners.

A copy of the aforesaid petition was received on October 26, 1983, by Messrs. Beck, Halberg and Williamson, who were and are legal counsel for a group of white Correctional Department Officers of the State of New York (designated in the proceedings below as the "Robert J. McClay, et al., Intervenors-Appellees-Appellants" herein "the McClay Respondents").

This response is submitted in support of the position of the petition for certiorari filed by the Frederick E. Althiser, et al., Petitioners, pursuant to the authorization granted by Rule 19.6 of the Rules of the Supreme Court of the United States.

The McClay Respondents, like the Altheiser Petitioners, are white

Correctional Department Sergeants of the State of New York who passed a promotional, civil service examination given for the position of Correction Department Lieutenant. A class action was instituted by minority officers who likewise took the promotional examination. The action was settled by the plaintiffs and the New York officials, but without the consent of the white officers who had passed the test and intervened in the courts below. The settlement deprived the intervenors of their right to appointment in rank order of their test scores, and also of the protection of the New York civil service laws and regulations and collective bargaining agreement rights. The settlement granted priority in the order of appointments to minority officers, even though their test scores

were lower than those of their white colleagues. The petition of the Altheiser intervenors reviews the record facts, states the reasons for granting the writ; and presents the questions which allow for a full review of the constitutional and other important legal issues that deserve review in the general public interest by this Honorable Court. The legal position of the McClay Respondents is identical to that of the Altheiser petitioners.

We therefore respectfully ask that the writ of certiorari be granted.

Respectfully submitted,

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